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LIMITED OFFICIAL USE SECTION 01 OF 04 PESHAWAR 1558

EO 12356: N/A
TAGS: PGOV, PINR, SNAR, EAID, SOCI, PK, AF
SUBJECT: PAKISTAN'S TRIBAL AREAS: HOW THEY ARE ADMINISTERED (OR NOT)

REFS: A, PESHAWAR 1456 B, PESHAWAR 1402

1. THIS IS THE THIRD MESSAGE IN A SERIES OF REPORTS ON PAKISTAN'S TRIBAL AREAS. THIS MESSAGE FOCUSES ON THE WAY THE GOVERNMENT OF PAKISTAN ATTEMPTS TO CONTROL THE TRIBAL AREAS. IT IS RELEVANT BECAUSE THE BUREAUCRATICS OF THE TRIBAL ADMINISTRATION ARE CRITICAL TO EFFORTS TO SUPPRESS THE NARCOTICS TRADE IN THE TRIBAL AREAS AND IN LAUNCHING DEVELOPMENT PROJECTS THROUGH AID.

TRIBAL AREA VERSUS SETTLED AREA

2. IN PAKISTAN, AND PARTICULARLY IN THE FRONTIER, DISTINCTIONS ARE FREQUENTLY DRAWN BETWEEN THE TRIBAL AREA ADJOINING THE NWFP AND THE SETTLED AREA. HOWEVER, THE FUNDAMENTAL DIFFERENCES FROM WHICH ALL OTHER DIFFERENCES STEEM IS THAT THE TWO AREAS ARE GOVERNED BY SEPERATE LAW. THE SETTLED AREA IS GOVERNED BY PROPERLY CODIFIED LAW (PAKISTAN PENAL CODE, CRIMINAL PROCEDURE CODE, CIVIL PROCEDURE CODE, AND EVIDENCE CODE, ETC.). LARGELY A HERITAGE OF THE BRITISH RAJ. THE TRIBAL AREA, ON THE OTHER HAND, IS GOVERNED THROUGH TREATIES BETWEEN THE TRIBES AND THE GOVERNMENT -- ALSO A HERITAGE OF THE RAJ -- UNDER WHICH TRIBES ARE RESPONSIBLE FOR THEIR INTERNAL AFFAIRS.

3. THE LAW IN MOST OF THE TRIBAL AREA IS UNWRITTEN AND BASED UPON SHARIAT (ISLAMIC INJUNCTIONS) AND IRILAJ (TRIBAL CUSTOMS). FOR A VERY SMALL PART OF THE TRIBAL AREA WHICH IS DIRECTLY UNDER CONTROL OF THE GOVERNMENT, THE FRONTIER CRIMES REGULATION (FCR) IS APPLIED ALONGSIDE THE CUSTOMARY LAW.

4. THE BRITISH JUDICIAL SYSTEM DID NOT MEET THE REQUIREMENTS OF THE TRIBAL SOCIETY. ITS INELASTICITIES WERE RELAXED BY INTRODUCING FCR IN 1872 WHICH WAS REVISED IN 1887 AND RE-ENACTED IN 1901 WHEN THE NORTH-WEST FRONTIER PROVINCE WAS SEPERATED FROM THE PUNJAB. THIS LAW IN ITS AMENDED FORM IS APPLICABLE TODAY TO THE TRIBAL AREAS OF PAKISTAN.

5. THE ESSENCE OF THE FCR IS ARBITRATION BY JIRGA (SEE PREVIOUS MESSAGE IN THIS SERIES) WHICH INVITES FOR THE SETTLEMENT OF DISPUTES BY CUSTOMARY METHODS. THE DECISION OF THE JIRGA IS RECOMMENDATORY. THE ACTUAL ACQUITTAL OR CONVICTION AND SENTENCE IS IN THE HANDS OF THE POLITICAL AGENT (PA). (SEE BELOW) THERE IS NO RIGHT OF APPEAL UNDER FCR, THOUGH THE COMMISSIONER SUPERVISING THE PARTICULAR AGENCY IS THE POWER OF REVISION.

6. A MAJOR FEATURE OF THE FCR IS THE CODIFICATION OF THE CONCEPT OF COLLECTIVE OF COMMUNAL RESPONSIBILITY FOR THE ACTIONS OF THE TRIBES IN GENERAL. THE ENTIRE TRIBE CAN BE PUNISHED FOR THE ACTIONS OF AN INDIVIDUAL, AND IT IS UP TO THE TRIBE TO ATONE FOR THE ACTS OF THE INDIVIDUAL OR TO SURRENDER HIM TO GOVERNMENT AUTHORITIES. THE FCR GIVES THE POLITICAL AGENT VAST POWERS TO DEAL WITH THE TRIBES. IF A TRIBE IS ACTING IN A HOSTILE OR UNFRIENDLY MANNER, THE PA UNDER SECTION 10(C) CAN:

-- SEIZE, WHEREVER THEY MAY BE FOUND, ALL OR ANY OF THE MEMBERS OF THE TRIBE;

-- SEIZE ALL OR ANY PROPERTY BELONGING TO ANY INDIVIDUAL OF THE TRIBE OR THE TRIBE COLLECTIVELY.

-- DETAIN IN SAFE CUSTODY ANY PERSON OR PROPERTY SO SEIZED, AND

-- CONFISCATE ANY SUCH PROPERTY.

7. THE RESULTANT DIFFERENCE IN PRACTICE BETWEEN THE TRIBAL AREA AND THE SETTLED AREA ARE MANY AND SIGNIFICANT. IN THE TRIBAL AREA, THERE IS NO POLICE FORCE. THERE ARE NO COURTS. THERE IS NO TAXATION. NO WEAPON IS ILLEGAL. IT IS A COMMON SIGHT IN THE TRIBAL AREAS TO SEE TRIBESMEN WITH AN AK-47 ASSAULT RIFLE SLUNG OVER THEIR SHOULDERS. IN FACT, IN THE ARMS BAZAAR OF DARRA ADAM KHEL, ABOUT TWENTY MILES FROM PESHAWAR, CUSTOMERS CAN BARGAIN (WE HEAR) FOR ROCKET LAUNCHERS OR HEAVY MACHINE GUNS. AT THE RECENT DEDICATION OF THE AID-FUNDED SADDAM-MARGHAN ROAD IN KURRAM AGENCY, TRIBESMEN CELEBRATED BY LETTING OFF ROUNDS FROM CHINESE ANTI-AIRCRAFT GUNS AND ROCKET PROPELLED GRENADE LAUNCHERS. PAKISTANI CUSTOMS AND EXCISE LAWS ARE ALSO NOT APPLICABLE IN THE TRIBAL AREA, WITH THE RESULT THAT A VISITOR CAN BUY FREELY ITEMS WHICH ARE EITHER BANNED OR SUBJECT TO VERY HIGH DUTY IN PAKISTAN, SO LONG AS HE OR SHE IS WILLING TO TAKE THE RISK OF SMUGGLING THE ITEM INTO THE SETTLED AREAS OR IS WILLING TO PAY THE SELLER FOR DELIVERY. HASHISH AND OPIUM ARE OFTEN ON DISPLAY. AS ARE SMUGGLED WATCHES AND HOUSEHOLD APPLIANCES. PASSPORTS AND VISAS ARE NOT REQUIRED OF TRIBESMEN FOR TRAVEL TO AFGHANISTAN. THERE IS NO ADULT FRANCHISE IN THE TRIBAL AREA; ONLY THE TRIBAL MALIKS VOTE TO ELECT TRIBAL REPRESENTATIVES TO THE NATIONAL ASSEMBLY. BT

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LIMITED OFFICIAL USE SECTION 03 OF 04 PESHAWAR 1558

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RESPECTIVELY. IN THE SUMMER THE PAKS FOR SOUTH WAZIRISTAN AND
GAKHAI SHIFT THEIR HEADQUARTERS TO WANA AND KALAYA, RESPECTIVELY
14. THE POSITION OF THE POLITICAL AGENT IN AGENCY ADMINISTRATION
HAS BEEN DESCRIBED AS THAT OF THE KINGPIN. WITHOUT A DOUBT HE IS
THE MOST IMPORTANT PERSON IN THE AGENCY, AND IT IS AROUND HIM THAT
ALL ACTIVITIES, ADMINISTRATIVE, POLITICAL AND DEVELOPMENTAL,
REVOLVE. HE COMBINES IN HIMSELF THE FUNCTIONS OF POLICE AND
JUDICIARY, AS WELL AS RESPONSIBILITY FOR SUPERVISING ACTIVITIES OF
ALL DEVELOPMENT DEPARTMENTS. HE ALSO HAS AT HIS DISPOSAL THE PARA-
MILITARY STRENGTH PRESENT IN HIS AGENCY.

15. HIS MAIN FUNCTION, HOWEVER, IS TO ENSURE THAT PEACE PREVAILS
AMONG THE TRIBES RESIDING IN HIS AGENCY AND THAT THERE IS NO
RESENTMENT, LOCALLY TRIGGERED OR INSTIGATED FROM ACROSS THE BORDER
AGAINST HIS GOVERNMENT. HISTORICALLY THE GOVERNMENT IN KABUL AND
THE GOVERNMENT IN DELHI, KARACHI, OR ISLAMABAD HAVE COMPETED FOR
INFLUENCE IN THE TRIBAL AREAS. THIS COMPETITION CONTINUES, TO
COUNTER AFGHAN INFLUENCE, AND TO KEEP THE TRIBES UNDER CONTROL.
A POLITICAL AGENT - 5 - 12-6 - 8-5-8 - 3/53, 9:3 35294(9) 8, 194, 34
194 8-58348, 8, 194 - 589... FRONT IS PURPOSE HE HAS AT HIS DISPOSAL
A "SECRET FUND" AND AN "ENTERTAINMENT FUND". (FRONTIER PEOPLE ARE
CONVINCED THAT MANY A POLITICAL AGENT HAS BECOME RICH WHILE
GATHERING INFORMATION AND APPEASING THE TRIBES.)

16. IN DISCHARGING HIS DUTIES A POLITICAL AGENT IS ASSISTED BY ONE
OR MORE ASSISTANT POLITICAL AGENTS, POLITICAL TENSILDARS, POLITICAL
WAZIS TENSILDARS AND SEVERAL OFFICE EMPLOYEES. FOR POLICE WORK
IN THE ADMINISTERED TRIBAL AREA HE CAN CALL ON THE KHASADARS.
RESPONSIBILITIES ARE ESSENTIALLY DIVIDED ON A GEOGRAPHIC BASIS.
AN AGENCY IS SUBDIVIDED INTO TENSILS WITH A TENSILDAR AS THE
CHIEF ADMINISTRATIVE OFFICER.

17. EACH OF THE FOUR FRONTIER REGIONS IS ADMINISTERED EXACTLY ON THE
SAME LINES AS AN AGENCY EXCEPT THAT THE DEPUTY COMMISSIONER OF THE
ADJOINING DISTRICT ACTS IN THE CAPACITY OF A PA AND FOLLOWS THE
SAME METHOD OF ADMINISTRATION. THE DEPUTY COMMISSIONERS SIT IN
THE CITIES OF PESHAWAR, KHAHAT, BANNU, AND DERA ISMAIL KHAN FOR
THE FRONTIER REGIONS BY THE SAME NAMES. FR PESHAWAR -- CALLED

JAWAKI OR HASSAN KHEL -- IS A SMALL AREA SOUTH-EAST OF PESHAWAR CITY
AND EAST OF THE MAIN PESHAWAR-KHAHAT ROAD. FR KHAHAT -- BETTER KNOWN
AS JAWA-AJAM KHEL -- HAS BEEN REKNOWN SINCE THE RAJ FOR ITS COTTAGE
CLAY INDUSTRY. THE MAIN ROAD LEADING SOUTH FROM PESHAWAR TRANSITS DAR

ADAM KHEL. FR BANNU, WEST OF BANNU CITY, IN WHICH SEVERAL SUBCLANS
OF AHMADZAI WAZIRS AND BHITTANIS LIVE, IS KNOWN SIMPLY AS FR BANNU.
FINALLY, FR DEJA ISMAIL KHAN IS DIVIDED INTO TWO PARTS -- THE NORTHERN
KNOWN AS BHITTANI AREA, AND THE SOUTHERN, THE ARGHA SHIRANI AREA.

18. DESPITE CIVIL ADMINISTRATION, KHASADARS, PRESENCE OF NATION-
BUILDING DEPARTMENTS AND THE SCOUTS, THE ESSENCE OF TRIBAL
ADMINISTRATION LIES IN THE ABILITY OF THE POLITICAL AGENT TO WIN
THE CONFIDENCE OF THE TRIBE BY PROVING THAT HE IS FAIR AND THAT
HE HAS THE BEST INTEREST OF THE TRIBAL PEOPLE IN MIND. WITHOUT
THE SUPPORT OR AT LEAST THE ACQUIESCENCE OF THE TRIBES, GOVERNMENT
OFFICIALS COULD NOT FUNCTION IN THE TRIBAL AREAS. TROUBLE HAS
FREQUENTLY ERUPTED IN THE PAST WHEN AN OVER-ZEALOUS OFFICER FAILED
TO PAY DUE REGARD TO TRIBAL SENSITIVITIES. TRIBESMEN JEALOUSLY WAA
AND WITH FIREARMS -- PROTECT THEIR RIGHTS, EVEN IF IT MEANS TAKING
UP THOSE ARMS AGAINST THE GOVERNMENT. WORK CAN BE STOPPED, OFFICIAL
VEHICLES FIRED UPON, GOVERNMENT EMPLOYEES KIDNAPPED AND CARS
HIJACKED ON THE SLIGHTEST INDICATION OF THE VIOLATION OF THE
TREATY OR TRIBAL CUSTOM.

THE BUREAUCRATIC HIERARCHY ABOVE THE PRESIDENT IS IN CHARGE

19. THE FEDERAL GOVERNMENT ADMINISTERED TRIBAL AREA IS GOVERNED BY THE
FEDERAL GOVERNMENT THROUGH THE OFFICIALS OF, OR THOSE ASSIGNED
TO, THE PROVINCIAL GOVERNMENT OF THE NWFP. IT IS IMPORTANT TO
KEEP IN MIND THAT THE RELATIONSHIP OF PAKISTAN AS THE SUCCESSOR
TO THE RAJ TO THE TRIBESMEN IS AS TWO MORE OR LESS EQUAL
SOVEREIGNTIES. ALTHOUGH PROVINCIAL OFFICIALS PARTICIPATE IN
THE ADMINISTRATION, WHEN THEY DEAL WITH THE TRIBAL AREAS, THEY
ARE ACTING ON BEHALF OF THE FEDERAL GOVERNMENT AND RESPONDING
TO A DIFFERENT HIERARCHY THAN WHEN CARRYING OUT THEIR PROVINCIAL
DUTIES.

20. ULTIMATE AUTHORITY FOR ADMINISTERING THE TRIBAL AREAS RESIDES
IN THE PRESIDENT OF PAKISTAN. FROM THE BOTTOM OF THE LADDER, ALL
AGENCY OFFICIALS REPORT TO THE POLITICAL AGENT. THE POLITICAL AGENT
IN TURN REPORTS TO THE COMMISSIONER OF ONE OF THE DIVISIONS OF THE
PROVINCE BUT WHO ACTS AS A REPRESENTATIVE OF THE FEDERAL GOVERNMENT
WHEN DEALING WITH THE AGENCIES UNDER HIS JURISDICTION. (WHEN HE DEALS
WITH THE DISTRICTS HE ADMINISTERS, HE IS ACTING AS A PROVINCIAL
GOVERNMENT OFFICIAL.) THE PAS AND COMMISSIONERS IN TURN REPORT TO A
SECRETARIAT OFFICER, THE SECRETARY OF HOME AND TRIBAL AFFAIRS, WHILE
DEALING WITH THE "HOME" PART OF THE JOB. HE IS A PROVINCIAL GOVERN-
MENT OFFICER, BUT FOR THE "TRIBAL AFFAIRS" PART HE WEARS A FEDERAL
GOVERNMENT HAT. BOTH THE COMMISSIONER AND THE SECRETARY, WHO AGAIN
HAS THE DUAL RESPONSIBILITY. THE CHIEF SECRETARY REPORTS BOTH TO THE
BT

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